

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-150678
	:	TRIAL NO. B-1504147
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
LANDEN BARNES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Landen Barnes appeals his sentences claiming the trial court erred in failing to merge his sentences for receiving stolen property and having a weapon while under a disability. Because the offenses are of dissimilar import, we affirm the judgment of the trial court.

Barnes was charged with one count of trafficking in cocaine, one count of trafficking in heroin, one count of possession of heroin, one count of possession of cocaine, one count of having weapons under a disability, one count of receiving stolen property, and one count of improperly handling a firearm while in a motor vehicle.

According to the bill of particulars, police officers initiated a traffic stop when Barnes failed to use a turn signal and failed to stop at a stop sign. Barnes jumped out of his car and began to run while carrying a semi-automatic handgun. After warning Barnes to stop, the officers tased and arrested him. The semi-automatic handgun he

possessed belonged to Jason Kampsen who had reported it stolen. Barnes had a prior felony possession-of-cocaine conviction that precluded him from possessing a gun.

Barnes agreed to plead guilty to possessing heroin, having a weapon while under a disability, and receiving stolen property. In exchange, the state dismissed the other charges. The trial court imposed consecutive sentences on all three counts. Defense counsel objected, arguing that receiving stolen property and having weapons under a disability should merge, because the stolen property he received was the gun that was the basis of the weapons-under-a-disability charge.

In his sole assignment of error, Barnes contends that the trial court erred by failing to merge his convictions under R.C. 2941.25, Ohio's allied-offenses statute. According to Barnes, the offenses of having a weapon under a disability and receiving stolen property were allied offenses of similar import, committed neither separately nor with a separate animus, and therefore, his separate convictions must be merged into one.

This court has already concluded that receiving a stolen gun and having a weapon under a disability constitute offenses of dissimilar import. *State v. Finnell*, 1st Dist. Hamilton Nos. C-140547 and C-140548, 2015-Ohio-4842, ¶ 72. As this court explained in *Finnell*, “offenses are of dissimilar import ‘when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.’” *Id.*, quoting *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraph two of the syllabus. “The import of the two offenses is evinced by such factors as the harm inflicted and the punishment the legislature associated with the offenses.” *Finnell* at ¶ 72, citing *State v. Earley*, 145 Ohio St.3d 281, 2015-Ohio-4615, 49 N.E.3d 266, ¶ 15; *State v.*

Miranda, 138 Ohio St.3d 184, 2014-Ohio-451, 5 N.E.3d 603, ¶ 25-26 (Lanzinger, J., concurring).

The criminal wrong committed by the possession of a firearm while under a disability is different from the criminal wrong resulting from receiving stolen property, which involves the retention of stolen property. *Finnell* at ¶ 73. Therefore, the offenses have a different import and were properly punished separately, notwithstanding that both offenses arose from Barnes's possession of the same firearm. *Id.* at ¶ 75.

Because the offenses are not subject to merger, the sentences are not contrary to law. Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and ZAYAS, JJ.

To the clerk:

Enter upon the journal of the court on March 29, 2017
per order of the court _____.

Presiding Judge